for preventing the British national from exercising the power of disposition over his property and the Master of the Rolls went on to say this (at page 602): "The way to estimate that compensation or damages — the sensible way no doubt — would be by calculating a sum in terms of what interest it would have earned. That has been done, but the sum that was paid has not been turned into interest so as to attach income tax to it. It remains compensation and, for these reasons, it appears to me that it is not a sum which attracts or attaches income tax to it." Lawrence L. J. took the same view and he rested his opinion partly on the fact that damages were paid in one lump sum and not by annual instalments. He cited with approval the decision of Wright J. in *The National Bank of Wales*[6] at 650, that in a case where a judgment had been pronounced for a lump sum with interest, the interest was in the nature of damages and not interest within the meaning of the Income Tax Acts. But the reasoning in the *National Bank of Wales* was held in *Riches* v. *Wesminster Bank, supra* to be erroneous, and it follows that the authority of this part of the opinion of Lawrence L. J. is to some extent weakened. Their Lordships have set out the facts in *Bonner Maurice* in some detail in order to show their very special and unusual nature. Notwithstanding these specialities the case was referred to and distinguished by Lord President Normand, as he then was, in *Spence* v. *C.I.R.*[7] thus:

"Of course, it is often necessary for a Court to estimate damages by reference to loss of income in a series of years, and when it does so the resulting amount of damages which is awarded to a successful party is a lump sum capital payment in place of income payments which he might have received annually. In the same way in a case to which we were referred, *Simpson* v. *Maurice's Executors*, a sum paid to a party by way of compensation under a peace treaty for something which he might have received but which he was prevented from receiving as income during a series of years was treated as a capital lump sum payment."

With the greatest respect their Lordships do not consider that a lump sum of damages, estimated by reference to lost income, is necessarily, or even usually, a capital payment, and if *Bonner Maurice* laid down any such proposition their Lordships would not be disposed to follow it. But they prefer to treat *Bonner Maurice* in the words of Viscount Simon in *Riches, supra* at page 397 as a case "of a very special character."

Several of the noble and learned Lords who were parties to the decision in *Riches* referred to the case of *Bonner Maurice*, but none of them suggested that it was to be distinguished by reason of the fact that the recipient of the award was an investor and not a trader. Accordingly their Lordships are of opinion that, for the purposes of this appeal, it is immaterial whether the respondents are traders or investors, and that the damages which come in place of lost income, fall to be treated as income for income tax purposes.

For these reasons their Lordships are of opinion that the Court of Appeal came to the correct decision in the present cases and the appeal will be dismissed with costs.

Appeal dismissed.

Solicitors: *Parker, Garrett & Co.; Coward Chance.*

REGISTRAR OF TITLES, JOHORE v. TEMENGGONG SECURITIES LTD.

[P.C. (Lord Diplock, Lord Morris of Borth-Y-Gest, Lord Hailsham of St. Marylebone, Lord Simon of Glaisdale and Lord Fraser of Tullybelton) April 27, 1976]

[Privy Council Appeal No. 38 of 1975]

Land Law — Registrar's caveat — Whether rightly and properly entered — Claim by Government for income tax duly assessed — Unsecured civil debt giving rise to no legal rights in or over property of debtor — Mere personal claim — Not interest of Federation — National Land Code, s. 320.

This was an appeal from the decision of the Federal Court ([1974] 2 M.L.J. 45), which held that the Registrar's caveat was wrongly entered against the land. The short facts were that the Li-Ta Company was the registered proprietor of land in Johore. It was indebted to the Federation Government for income tax which was overdue. On August 30, 1972 it entered into an agreement with the respondents for the sale of its land to the respondents. The sale was completed on September 22, 1972 when the purchase price was satisfied by the issue of shares to the Li-Ta Company. In the meantime the Revenue department had learned that Li-Ta Company was proposing to sell its land at Johore. It had started an action for recovery of the tax on September 24, 1972. On October 2, 1972 the Department of Inland Revenue wrote a letter to the Registrar of Land Titles requesting him to enter a Registrar's caveat in respect of the land and this was done on October 11, 1972. When the application for transfer of title to the respondents and other documents were presented for registration, the Registrar rejected them on the ground that they were prohibited by the entry of Registrar's caveat. The respondents thereupon applied to the High Court for an order directing the Registrar to cancel the Registrar's caveat and to register the documents. This application was dismissed by the High Court upon the ground that the claim of the Federation to recover overdue income tax from Li-Ta Company was an interest of the Federation entitled to protection by a Registrar's caveat. Upon appeal to the Federal Court, the court allowed the appeal and directed the Registrar to enter upon the register the documents presented. The Registrar of Titles thereupon appealed to the Privy Council.

Held, dismissing the appeal: (1) although Malaysian income tax became due and payable by the taxpayer to the Federation upon notice of assessment its legal nature was that of an unsecured civil debt. Until it was converted into a judgment by the recovery of judgment in an action, the unsecured civil debt gave rise to no legal rights in or over any property of the taxpayer nor to any remedies against the taxpayer's property. It was a mere personal claim against him and did not come within the meaning of "interest" in section 320(1) of the National Land Code;

(2) the interests which the Registrar of Titles was empowered to protect under section 320(1)(b) were confined to interests in the land that were recognised by the Land Code as being either registrable or otherwise entitled to protection. An unsecured creditor of the proprietor of the land had no such interest in the land;

(3) even if no contract of sale by Li-Ta Company to the respondents had been in existence at the time, the Registrar of Titles would not have been empowered by section 320(1) of the National Land Code to enter any Registrar's caveat in respect of the land upon the information available to him.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Patrick Medd Q.C. (*Hon. Christopher Bathurst* and *Mohamed Nizar bin Idris* with him) for the appellants.

Gerald Godfrey Q.C. (*John Chadwick* and *Wong Kim Fatt* with him) for the respondents.

Lord Diplock (delivering the judgment of the Board): The facts which give rise to this appeal can be stated briefly.

In 1972, Li-Ta Company (Pte.) Limited ("Li-Ta") was the registered proprietor of alienated land in the State of Johore held under a number of titles. It was incorporated in Singapore and was indebted to the federation of Malaysia for income tax, which was overdue. On August 30, 1972, Li-Ta entered into an agreement with another company incorporated in Singapore, Temenggong Securities Limited ("Temenggong"), for the sale of its Johore land to Temenggong. The consideration for the sale was the issue to Li-Ta of shares in Temenggong. The date for completion under the contract was on or before September 30, 1972. It took place on September 22, 1972, when the purchase price was satisfied and Li-Ta executed the transfers of the land in favour of Tumbuk Estate Sdn. Bhd. ("Tumbuk"), a wholly-owned subsidiary and nominee of Temenggong. Nine of the titles were subject to registered charges. These were discharged by Temenggong before applying to the Registrar of Titles for registration of the transfer of the land from Li-Ta to Tumbuk and the discharge of the charges. The applications to the Registrar were made on December, 14, 1972.

In the meantime, the Revenue Department of the Federation had learnt that Li-Ta was proposing to sell its land in Johore. It had started an action against Li-Ta for recovery of the tax on September 24, 1972. Fearing that its chances of enforcing by execution any judgment ultimately obtained against Li-Ta would be jeopardised if that company disposed of its land in Johore and removed its assets outside the jurisdiction before judgment was recovered against it, the Department of Inland Revenue on October 2, 1972, wrote a letter to the Registrar of Land Titles requesting him to enter a registrar's caveat in respect of the nine lots of land of which Li-Ta was the registered proprietor at that date. Neither Temenggong nor Tumbuk had applied to the registrar to enter a private caveat in respect of the land based on their claim to be beneficially interested in the land as purchasers under a Contract of Sale of August 30 or as transferees under the Instrument of Transfer of September 22, 1972. The registrar was accordingly unaware of this contract and of its completion. On October 11, 1972, he entered a registrar's caveat in respect of the nine lots in purported pursuance of his powers under section 320(1)(b)(i) of the National Land Code for protecting the interest of the Government of the Federation.

On March 15, 1973, the registrar formally rejected the application by Tumbuk for registration of the transfer of title and for the discharge of the charges upon the ground that these were prohibited by the entry of the registrar's caveat on October 11, 1972. On June 12, 1973, Temenggong and Tumbuk applied by originating motion in the High Court in Malaya for an Order directing the registrar to cancel the registrar's caveat of October 11, 1972, and to register the transfer of the title in the land to Tumbuk and the discharge of the charges.

This application was dismissed by the High Court (Pawan Ahmad J.) upon the ground that the claim of the Federation to recover overdue income tax from Li-Ta was an interest of the Federation entitled to protection by a registrar's caveat under section 320(1)(b)(i) of the National Land Code. Upon appeal to the Federal Court, that court allowed the appeal and directed the registrar to enter upon the register the transfer of September 22, 1972, transferring the titles of the nine lots from Li-Ta to Tumbuk and to enter discharges of the charges on those titles.

From the judgment of the Federal Court, the registrar now appeals to His Majesty The Yang Dipertuan Agung by special leave of this Board, with the object of clarifying the nature of the "interests" which the registrar is entitled to protect by a registrar's caveat under section 320(1)(b) of the National Land Code.

In each of the States of Malaya what corresponds in English land law to the freehold interest in land is vested in the State. Land may be disposed of by the State either in perpetuity or for a term of years, in either case in consideration of the payment of a rent, and while so disposed of is known as alienated land. The National Land Code applies a modified form of the Torrens system of registration of titles relating to alienated land.

The person in whom is vested land which has been disposed of by the State upon these terms is referred to in the Code as the "proprietor" of the land and his interest as the "title" to the land. Under the Code interests in alienated land are divided into two categories: those which are registered and those which are not. The only interests capable of being registered are title, leases (including subleases) for a term exceeding three years, charges on the land and easements over the land. Registered title to land can be transferred and other registered interests in land can be created and transferred by registered dealings only. These dealings take effect when a written instrument in the appropriate form provided for by the Code is presented for registration at the Registry. The title to land or to an interest in the land which is conferred by registration is indefeasible in the absence of fraudulent or similar misconduct on the part of the person in whose name the title or interest is registered; but such misconduct does not defeat the registered title or interest of a bona fide purchaser for value from the guilty party or any person claiming through such a purchaser.

The restriction under the Torrens system on the kinds of interests in land which are capable of being registered does not prevent the creation of other kinds of interests in land or dealing with them. In particular it does not prevent or restrict the creation of beneficial interests in land whether under express trusts or under constructive or resulting trusts arising by operation of Malayan law, which in this respect is derived from the rules of equity in force in England in 1956. But the temptation to regard the distinction between registered and unregistered interests in land under the National Land Code as similar to the difference in English law between legal estates and equitable interests in land should be resisted, for the analogy is not close and is liable to be misleading.

Interests in land that are unregistrable fall into three categories *viz.* tenancies for a term of less than

three years, liens created by deposit of instruments of title as security for a loan, and beneficial interests under a trust affecting the land. Where, however, the person registered as proprietor of land holds the title as bare trustee for a beneficiary, the beneficiary may convert his beneficial interest into a registered interest by requiring the registered title to be transferred to him.

The National Land Code provides means of protecting unregistered interests in land from being overridden by *bona fide* purchasers for value of a registered title or interest. Short term tenancies are protected by endorsing the register document of title to the land with the words: "Exempt Tenancy Claim." This preserves the tenancy as against subsequent grantees of the land or of any interest in it. Protection to all other kinds of unregistrable interests is provided by entering a caveat in the register on the document of title to the land. Until it is removed a caveat imposes restrictions on the entry in the register of dealings in the land.

There are four classes of caveats: a "Registrar's caveat," a "private caveat," a "lien-holder's caveat" and a "trust caveat." The instant appeal is concerned with a Registrar's caveat, and it is unnecessary for present purposes to say anything more about line-holders' and trust caveats, save to note that the latter are entered on the application of the settlor or trustees and not on the application of a beneficiary. An understanding of the nature and effect of private caveats, however, is in their Lordships' view an essential aid to the construction of sections 319 to 321 which deal with Registrar's caveats.

Private caveats are dealt with in sections 322 to 329.

Section 323(1) provides:

"The persons and bodies at whose instance a private caveat may be entered are —

(a) any person or body claiming title to, or any registrable interest in any alienated land or any right to such title or interest;

(b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and

(c) the guardian or next friend of any minor claiming to be entitled as mentioned in paragraph (b)."

So the protection afforded by a private caveat is available to claimant to any interest capable of subsisting in alienated land whether that interest is of a kind that is registrable or not, with the exception of claims to exempt tenancies or liens, for which other means of protection are provided.

Where the application is for a private caveat expressed to bind the land itself and not a particular interest in the land only, it is provided by section 322(2) that the effect of the caveat shall be:

"to prohibit so long as it continues in force the registration, endorsement or entry on the register document of title thereto of —

(a) any instrument of dealing executed by or on behalf of the proprietor thereof, and any certificate of sale relating thereto;

(b) any claim to the benefit of any tenancy exempt from registration granted by the said proprietor; and

(c) any lien-holder's caveat in respect thereof."

Where a private caveat is expressed to bind a particular interest only the corresponding prohibition relates to that registered interest only.

The registrar is required by section 324(1) to endorse the register document of title to the land to which the caveat relates with the words "Private Caveat" as soon as may be after the application is received. The caveat takes effect, however, from the time the application is received at the registry and the prohibition applies to the registration, endorsement or entry of instruments, claims to exempt tenancies or lien-holders' caveats received at the registry after that time.

The purposes of a private caveat is to preserve the *status quo* pending the taking of timeous steps by the applicant to enforce his claim to an interest in the land by proceedings in the courts. If the person whose land or interest is bound by the caveat applies to the registrar for its removal, the registrar must remove it at the expiry of a month unless the court upon the application of the caveator orders otherwise. Any person aggrieved by a private caveat may apply to the court at any time for an order for its removal. The registrar's functions in relation to the entry and removal of private caveats are ministerial only. He is not concerned to enquire into the validity of the claim on which an application for a private caveat is based; and a person who secures the entry of a private caveat without reasonable cause is liable to compensate anyone who suffers loss or damage as a result of such entry.

A registrar's caveat has substantially the same prohibitory effect as a private caveat expressed to bind the land itself. It is entered by the registrar of his own motion by endorsing the register document of title to the land with the words "Registrar's Caveat Entered" and the time of entry. In one respect its effect is more severe than that of a private caveat: it operates to prohibit the registration, endorsement or entry of instruments, claims to exempt tenancies and lien-holders' caveats which were received at the registry before the time of entry of the registrar's caveat if they have not been already entered on the register document of title by then. On the other hand the registrar may waive the prohibition in any case where he is satisfied that this would not be inconsistent with the purpose for which the caveat was entered.

Section 320 specifies the circumstances in which registrar's caveats may be entered:

"320. (1) Subject to sub-section (2), a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable —

(a) for the prevention of fraud or improper dealing; or

(b) for protecting the interests of —

(i) the Federation or the State Authority, or

(ii) any person who is in his opinion under the disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the Federation; or

(c) by reason of some error appearing to him to have been made in the register or issue document of title to the land or any other instrument relating thereto.

(2) Knowledge by the Registrar of the fact that any land or interest therein has been acquired, or is to be held, by any person or body in a fiduciary capacity shall not

of itself constitute a ground for entering a Registrar's caveat in respect of that land."

Section 321(3) deals with the circumstances in which it may be cancelled:

"321. (3) A Registrar's caveat shall continue in force until it is cancelled by the Registrar —

(a) of his own motion; or

(b) on an application in that behalf by the proprietor of the land affected; or

(c) pursuant to any order of the Court made on an appeal under section 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b)."

Under these sections the Registrar's functions in relation to registrar's caveats are not exclusively ministerial as they are in relation to the other kinds of caveats. They require the exercise of a discretion that is quasi-judicial in its nature. The prohibitory consequences resulting from the entry of a registrar's caveat impose what may be very damaging restrictions upon the private rights of the proprietor of the land. The registrar is not entitled to impose them unless they appear to him to be necessary or desirable for one or more of those purposes which upon the true construction of the section are specified in paragraph (a) or (b) of section 320(1) or necessary or desirable to counteract such documentary error as is mentioned in paragraph (c).

In determining whether or not to exercise the power conferred upon him by the section, the registrar can only act upon such information as is available to him. This will consist of what is entered in the register itself or filed in the registry, together with such additional information as may have been supplied to him by whoever has requested him to exercise his power to enter a registrar's caveat.

In the instant case the only information given by the Department of Inland Revenue in its letter of October 2, 1972, requesting the registrar to enter caveats in respect of the nine lots of land of which Li-Ta was registered as proprietor, was exiguous in the extreme, but their Lordships will deal with this appeal upon the assumption that this information had been supplemented by the time the registrar's caveat was entered on the register on October 11, 1972. They will assume that the following facts were then known to the registrar: *viz.* (a) that there was owing to the the Federation by Li-Ta a substantial sum by way of overdue income tax, (b) that the Federation had on September 24, 1972, started proceedings against Li-Ta in the High Court at Muar to recover as a civil debt the amount of tax due, (c) that those proceedings were still pending and judgment had not yet been obtained, (d) that Li-Ta was a company registered in Singapore and that if it were able to dispose of the nine lots of land there was a risk that by the time judgment against it was obtained it would be left with no assets against which execution could be had in Malaysia and (e) that the Federation would not be able to recover by proceedings brought outside Malaysia any claim for tax against Li-Ta.

Malaysian income tax becomes due and payable by the taxpayer to the Federation upon notice of assessment. Its legal nature is that of an unsecured civil debt. As such it is recoverable by the Federation in a civil action. Until it is converted into a judgment debt by the recovery of judgment in the action, an unsecured civil debt gives rise to no legal rights in or over any of the property of the debtor, nor to any remedies against the debtor's property. It is a mere personal claim against him.

Their Lordships will first consider whether upon the information which they have assumed to have been available to the registrar and no more (*i.e.* in the absence of any knowledge of the contract of sale by Li-Ta to Temenggong of August 30 and its completion on September 22, 1972,) the registrar would have been empowered by section 320(1)(b)(i) to enter a registrar's caveat in respect of lands of which Li-Ta was registered as proprietor. This depends upon whether the meaning to be attached to the word "interest" in the phrase "for protecting the interest of" in paragraph (b) is wide enough to include the advantage to an unsecured creditor of being able to prevent his debtor from parting with property which, if he were to retain it until judgment for the amount of the debt had been obtained against him, could be made available in execution proceedings to satisfy the judgment.

In the High Court Pawan Ahmad J., was of opinion that the word "interests" in the subsecution bore a popular and not a technical meaning. He considered that the mere existence of a civil debt was sufficient to give to the creditor what the judge described as a "contingent" interest in all the property of his debtor which, so long as he retained it, would become available in proceedings by way of execution of a judgment for the debt if and when the creditor obtained one.

Upon appeal the Federal Court did not deal specifically with the general proposition accepted by Pawan Ahmad J. They allowed the appeal upon a narrower ground arising on the particular facts of the instant case — *viz.* that by the time the registrar's caveat was entered Li-Ta had already ceased to have any interest in the land that was capable of being made available in execution to satisfy its judgment debts, since on completion of the contract of sale on September 22, 1972, and payment of the purchase price by Temenggong Li-Ta had parted with all beneficial interest in the land and held the registered title as bare trusteee for the purchaser.

The National Land Code in its preamble is expressed to be "a law with respect to land tenure, registration of titles relating to land, transfer of land, leases and charges in respect of land, and easements and other rights and interests in land." The expression "interest" is used in many sections throughout the Code apart from section 320 and in none of them to which their Lordships' attention has been drawn can it be plausibly suggested that it bears any wider meaning than an interest in land of a kind which is recognised by the Code as being either registrable or otherwise entitled to protection. These comprise registered titles, registered leases and subleases for three years or more, registered charges and registered easements, short-term tenancies, exempt from registration, liens created by deposit of instruments of transfer and all beneficial interests in land arising under express, constructive or resulting trusts.

In section 320(1)(b) the word appears as "interests" in the plural. The learned High Court judge attached significance to the use of the plural which he thought bore a wider meaning than the singular form; but their Lordships agree with the Federal Court that since the paragraph deals with protecting the interests of a number of different persons, the use of the plural was a necessity of draftsmanship from which no inference can be drawn that it was intended to have some wider content than the singular. It is, however, in their Lordships' view significant that the persons whose interests are entitled to protection under (b) are not confined to the Federation and the State Authority; they include minors, the mentally afflicted and anyone who is absent from the Federation. The expression "interests" must bear the same meaning in relation to the categories of persons specified in subparagraph (ii) as it does in relation to the Federation and the State Authority. If the mere existence of an unsecured civil debt owed to the Federation entitles the registrar to restrain the debtor from dealing with land of which he is the registered proprietor it must also entitle him to impose a similar restraint upon a simple contract debtor of any private person who does not happen to be within Malaysia. Their Lordships are unable to accept that Parliament by its use of the expression "interests" intended to empower the registrar to confer upon a limited and miscellaneous category of unsecured creditors preferential rights over the lands of their debtors which are not available to creditors in general and are of a kind which has hitherto been unknown to the law.

The characteristic which is common to the three categories of persons specified in subparagraph (ii) is that they are handicapped in their ability to search for themselves the entries in the register relating to land in which they are entitled to an interest or to learn of any threatened dealing with the land which might have the effect of overriding their interest and which accordingly would justify an application for a private caveat. So far as these three categories of persons are concerned, in their Lordships' view the clear intention of Parliament in including paragraph (b) in section 320(1) was to enable the registrar of his own initiative to do for persons in any of these categories what could have been done upon an application made by them for a private caveat; and to do no more than that. As a public servant appointed by the State, the registrar is an appropriate officer himself to do on behalf of the Federation and the State Authority what in the case of private individuals he could be required to do by a formal application on their part for the entry of a private caveat. Their Lordships accordingly conclude that the interests which the registrar is empowered to protect under section 320(1)(b) are confined to interests in the land that are recognised by the Code as being either registrable or otherwise entitled to protection. An unsecured creditor of the proprietor of land has no such interest in the land. Even if no contract of sale by Li-Ta to Temenggong had been in existence at the time, the registrar would not have been empowered by section 320(1) to enter any registrar's caveat in respect of Li-Ta's land, upon the information which their Lordships have assumed was available to him. Upon this ground they would dismiss the appeal.

Their Lordships will advise His Majesty The Yang Dipertuan Agung that this appeal should be dismissed with costs to be paid by the appellant to the respondents.

Appeal dismissed.

Solicitors: *Stephenson Harwood & Tatham; Coward Chance.*